No. 83-2065

IN THE

SUPREME COURT OF THE UNITED STATES

TERM: OCTOBER 1983

ROLAND A. JONES,

PETITIONER,

v.

DEPARTMENT OF HUMAN RESOURCES (DHR), STATE OF GEORGIA, et al.,

RESPONDENTS.

PETITIONER'S SUPPLEMENTAL BRIEF TO REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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AUTHORITY FOR SUBMISSION

Rule 22.6 provides that any party may file a supplemental brief at any time calling attention other intervening matter.

Information on Geogria law and Merit System Rules, withheld by respondents, is hereby provided by Petitioner herein.

SUMMARY OF PREVIOUS DISPOSITIONS

Not including the rights and privi-

leges denied appellant by DHR, the record reveals that I submitted to the courts:

Substantive request for action/consideration.....34

Administrative request.....3

Total..... 37

Of the 37 requests/motions submitted to District and the Appeals Courts, approvals and disapprovals were as follows:

Substantive request for action/consideration denied....33

Administrative request approved.....3

De novo review request, no response-ignored by 11 Cir...1

All of respondents 2 motions for the misapplication of precedents of Bishop and Roth were GRANTED. See RECORD OF REQUEST DENIALS at the Court of Appeals at Appen A.

SUMMARY OF TERMINATION FACTS

The action was brought pursuant to respondents use of practices and procedures that were made unlawful under U. S. Supreme Court decisions, decisions in the 11th Cir., and decisions against the

DHR in this circuit (e.g. Whittaker and Kennedy); respondents entered an agreement of an ensuing and continuing "pattern" of disparate treatment and "discrimination" covering a four (4) month, 23 day period of a six (6) month work test. Supervisors retaliated by means of termination before the work test was completed. Respondents designed this method of "retaliation" to foreclose on Petitioner's job opportunities and freedom of expression within the DHR. Respondents terminated Petitioner because of my opposition to discriminatory practices and procedures used by the supervisors.

I wish to bring to the attention of the Court an extremely odd pattern of circumstances and discharges which were directly or indirectly orchestrated by supervisors as they pertain to black males and the Planning and Evaluation Unit, Division of Family and Children Services, Department of Human Resources:

1. Upon appointment, to a classified covered position as a Planner, I was assigned an inordinate volume of work and a multitude of varied work assignments not related to the job that I was hired for. Some of the duties included office messenger boy, moving office furniture (was in a all female unit), and being assigned the filing work assignments of an incompetent white female employee in the unit. Other white females in the unit were allowed to specialize on one work project. I was assigned, and I completed it, the work assignment of another female that had rested uncompleted for over two years.

2. Being the newest member of the unit and a work test employee, without any seniority over the other members of the unit, I was assigned the supervisory responsibilities of the unit supervisor when my supervisor was away on leave, sick leave, or away in school.

3. Contrary to three different rules (See the Working Test Rule, encl. 2, herein and, items 8, 9, 10, page 70 Record of Appendices), the supervisors would not credit me for all of my time on the job which started on May 18, and noton June 1.

4. I was criticized, and later fired, for asking defendants to correct my record based on the above rules.

5. Although qualified (See Appendix H, Record of Appendices), available, and on location, I was not given the opportunity to compete for the in-house position as the Director of the Management Information Office. A white male was hired from outside of the DHR and the State Merit System.

6. Although I was better qualified, holding a Merit System classification rating higher than a Training Coordinator, I was not given the opportunity for the in-house position of Training Coordi-

nator. A white female was hired from outside of the DHR and the Merit System.

7. Just before my arrival, a senior black male who was functioning in a planning and evaluation unit was transferred out of the unit and defendant female was hired from another division in DHR and assigned as the CHIEF of the unit. The black male subsequently resigned his position.

8. Another black male on temporary duty with the unit, known as Abdul, was also fired during the time that I was assigned to the unit.

9. I voiced my dissatisfaction concerning 1-6, above, and was fired before the work test was completed. (See Judge Godbold Cmt., p 7, my Reply, yellow cov.).

10. I acted in a manner reasonable under the circumstances.

11. The black Dep. Director (a retired Army Lt. Col.) resigned. Shortly after his resignation, I was fired.

12. With all black males removed, a temporary female replacement was hired to replace me. She was later replaced by a permanent hire making the unit 100% female.

13. As the result of an investigation by the Georgia Department of Labor, on January 22, 1983, I was provided a decision confirming the employment decision to fire me as arbitrary and capricious, because my firing was not because of a lacking in job performance:

> "Information supplied by the employer does not specify any particular instances of claimant's failure to follow rules, orders, or instructions, the burden of proof being on the employer, and the presumption with claimant..."

PRESUMPTIONS

1. 42 U.S.C 1983 provides a private, federal remedy for persons deprived of federal rights under color of state law.

2. Title VII was made applicable to Merit Systems of State and local governments in 1972.

3. "A statute designed to remedy the national [State of Ga.] disgrace of discrimination in employment should be interpreted generously to comport with its primary purpose..." California Brewers Association v. Bryant, U. S. 63 L.Ed 2d 55 (1980).

4. Nontenured [probationary] librarian in a civil rights action showed that her constitutionally protected conduct under the First Amendment was a substantial or motivating factor in decision not to rehire her. The university had to demonstrate by a preponderance of the evidence that it would have reached the same decision as to employee's employment in the absence of such conduct. U.S.C.A. Const. Amend. 1, Montgomery v. Boshears, 698 F.2d 739 (11th Cir. 1983 Miss.), United Carolina Bank v. Board of Regents of Stephen F. Austin State University, 665 F.2d 553 (5th Cir. 1982 Tex.), White v. South Park Independent School Dist., 693 F.2d 1163 (11 Cir. 1982 Tex.), Pinkard v. Pullman-Standard, a Div. of Pullman, Inc., 678 F.2d 1211 (11th Cir. 1982

Ala.), and Williams v. City of Valdosta, and 689 F.2d 964 (11th Cir. 1983) 42 U.S.C.A. 1983.

5. It is reasonable to presume that a termination without relief pursuant to an appeal process creates an irrebutable presumption.

6. It is reasonable to presume that during the hiring process, applicants for employment are protected; once permanent status is attained, and during the full term of employment thereafter, an employee is protected; thus, it is reasonable to presume that doing the short term of a working test (probationary) period an employee is also protected.

7. It is reasonable to presume that a greater burden than that approved by the U. S. Supreme Court has been required of me.

8. It is reasonable to presume that:

> "pro se complaints are held to less stringent standards than formal proceedings drafted by lawyers" Hohman v. Hogan, 597 F.2d 490 (2d Cir.

1979).

9. It is reasonable to presume that:

> "It cannot be said that government has any greater interest in helping one individual than in refraining from harming another. Thus, the government has no compelling justification for inflicting such harm."

10. The 5th Cir. (11th Cir) Court of Appeals has joined three other circuits in holding that the McDonnell Douglas formulation is applicable to discharge cases. (See Flowers v. Crouch-Walker Corp., 552 F.2d 1277 (7th); Garrett v. Mobil Oil Corp, 531 F. 2d 892 (8th) and Pitter v. Goodwill Industries, 518 F.2d 864 (6th). Thus, the plaintiffs were required to show that 1) they are members of a protected minority; 2) they were qualified for the jobs from which they were discharged; 3) they were discharged; and 4) when they were discharged, their employer filled the positions with non-minority. Marks v. Prattco, Inc., 607 F.2d 1153 (5th Cir.). (See also Marshall v. Goodyear Tire and Rubber, 544 F. 2d

730, 1977, and Whiting v. Jackson State University, 22 FEP 1296, 1980).

11. It is reasonable to presume that the Merit System Rules and Regulations are a part of the "employment contract", binding on the employee. Conversely, to be legally sufficient these rules and regulations that are binding the employee are equally binding on the employer.

12. In Adams v. McDougal, 695 F. 2d 104 (1982), the term contract as used in the Civil Rights Act, refers to a right in the promisee against the promisor, with a correlative special duty in the promisor to the promisee of rendering the performance promised. (See also 42 U.S.C. 1981).

13. To be legally sufficient in the execution of a discharge, a Merit System employer who proclaims, throughout his rules and regulations, fair and equitable treatment and that his rules and regulations are in the spirit of Federal Laws,

is bound to follow and correct inequities caused by his supervisors in the use of his rules and regulations; a Merit System employer who also proclaims a dictate of "ethics" in his rules and regulations must prevent and control unethical actions of his supervisors.

14. It is reasonable to presume that discharges not conducted in accordance with the employers own laws and rules and regulation fall within the framework of federal laws governing the Merit Systems of State and local governments on the proposition that discrimination is illegal and due process requires an agency, as a minimum, must "comply" with its "own" Merit System Rules and Regulations.

15. Respondents also imply at pages 7 and 20 that under Georgia law and a Rule 12.301.1 discharge of a working test employee is backed by Georgia law and is at the discretion of supervisors, however:

"regulations validity prescribed by a government administrator are binding upon him as well as the citizen, and this principle holds even when the administrative action under review is discretionary in nature." Accardi v. Shaughnessy, 347 U.S. 260 (1954).

16. The attention of the Court is invited to other new conclusions of law that I deem relative to the questions in this case at enclosure, attached.

INVOLUNTARY SEPARATION RULE 12.301.1 IS AN ARBITRARY RULE, NOT SUPPORTED BY GEORGIA LAW

The employer's right to run his business must be balanced against the right of the employee to express his grievances and promote his own welfare. Jefferies v. Harris County Community Action Association, 615 F. 2d 1025 (5th Cir. 1980).

An employee may demonstrate pretext for an impermissible discrimination action and that a discriminatory reason more likely motivated the employer and that the employer's explanation is unworthy of credence. Civil Rights Act of 1964, 701 et seq., 42 U.S.C.A. 2000e et seq.; Sweat

v. Miller Brewing Co., 708 F.2d 655 (11th Cir 1983).

The State law as offered by respondents is not correct, misleading, and it represents an insurmountable barrier. Under the insurmountable barrier test, a statutory scheme which makes a status an insurmountable obstacle to the vindication of rights or the receipt of benefits will constitute a denial of equal protection. (See Handley, by and Through Herron v. Schweikwer, 697 F. 2d 999 (11th Cir. 1983), and U.S.C.A. Const., Amend. 14.)

The Merit System Rules and Regulations must be grounded in the State Merit System Act, and stem from the Act to have the force and effect of law.

In the Purpose of the Merit System Rules and Regulations it is stated:

"The purpose of these rules is to implement and give effect to the provisions of Article IV, Section 6, Paragraph I of the State Constitution of 1976, and of the Merit System Act (Ga. Laws, 1975, p. 79, as amended)..."

According to Georgia Merit System law governing Merit System personnel, the rules and regulations are applicable to covered positions and working test employees who are covered by the rules and regulations because they occupy the covered positions; therefore, a right of appeal relief in accordance with the rules and regulations does, in fact, exist.

In addition to the rules and regulation covering working test employees provided this Court at Appendix "F", my Record of Appendices, the State of Ga, Merit System Act 81, 1975 states:

1. "(16) Working test employee' or employee on working test' means a covered employee serving in the class of a covered position ..."

2. "(11) Covered employee' means an employee subject to the rules and regulations of the Merit System."

3. "(10) Covered position' means a position subject to the rules and regulations of the State Merit System."

4. "(15) Working test' or working test period' means the initial period of employment in a class of covered position..."

GA. LAW, 1975, Section 7. Adverse Actions, Appeals and Hearings:

> "NO (emphasis supplied) **employee** of any (emphasis supplied) department who is included under this Act or hereafter included under its authority and who is subject to the rules and regulations prescribed by the State Merit System MAY BE DISMISSED from said department or OTHERWISE ADVERSELY AFFECTED as to COMPENSATION OR EMPLOYMENT STATUS **EXCEPT FOR GOOD CAUSE"**

Respondents implied to both the District and Appeals Court that Section 45-20-2 (16) and (17), Ga. Code was their polestar Georgia law that they claimed permitted at will discharges; however, they did not present it to the U. S. Supreme court for scrutiny and evaluation.

Section 45-20-2(16) (17) of the Official Code of Georgia provides as follows:

> "(16) "Working test" or "working test period" means the initial period of employment in a class of covered positions following appointment, reappointment, or promotion. During this period, the employee is expected to demonstrate to the satisfaction of the appointing authority that he has the knowledge, ability, aptitude, and other necessary qualities to perform satisfactorily the duties of the position in which he has been

employed. The working test period will normally be the first six months in the class of positions; provided, however, that the commissioner may fix the length of the working test period for any class at not less than three months nor more than 12 months exclusive of time spent in nonpay status or in an uncovered position.

(17) "Working employee" or "employee on working test" means a covered employee serving a working test period in the class of covered positions in which he has been employed; provided, however, that an employee serving a working test period following a promotion from a lower class in which he held permanent status shall retain permanent status rights in the lower class until he attains permanent status in the class to which he has been promoted.

In Franks v. Bowman Transportation Co., Inc., 424 U. S. 747 (1976) it has been concluded that one of the central purposes of Title VII is to make persons whole, and that there is no legislative history to support making a distinction between employees employment rights by a mere classification as permanent or working test. The above Georgia laws make no distinction.

A State statute that is facially vague

is in violation of due process when the law is impermissibly vague in its applications. Facial vagueness occurs when a statute, such as the Georgia Law (O. C. G. A. 45-2-8 (a); Ga. Code Ann. 40-2207 (a)) implied by respondents to be an authority for terminations, is utterly devoid of a standard of conduct so that it simply has no core and it cannot be validly applied to any conduct. (High Ol' Times Inc. v. Busbee, 673 F. 2d 1225 (11th Cir. 1982).

When statute or ordinance states that public employee can only be terminated for just cause, even a working test employee has property right of which he cannot be deprived without due process. Hearn v. City of Gainesville, 688 F.2d 1328 (11th Cir. 1982), and unequal application of a state law, fair on its face, may act as a denial of equal protection. U.S.C.A. Const. Amend. 5. Ziegler v. Jackson, 638 F.2d 776 (5th Cir. 1981).

Respondents imply at page 16 in their opposition to my petition that a working test employee, has no right to seek relief pursuant to their rules and regulations; a claim which is conditioned for "permanent status" employees only. This is misleading to this Court and is really irrelevant to the issues at bar.

However, respondents are correct by stating at page 16 that Ga Code Ann. 40-2207 conditions the dismissal of "permanent status employees" only; however, they state it in a context as if it applies to the dismissal of a "working test" employee; however, it stands as they have stated, it applies to dismissals of permanent status employees only.

Respondents are incorrect in stating at page 19 that I asserted the issue as a failure to retain me as a permanent status employee. The issue correctly stated: I was fired before I had the opportunity to reach the threshold

leading into permanent status, and permanent status, in the eyes of my supervisors, would have guaranteed me the right to file an appeal against them for their actions against me.

Being fired with less than 24 hour notice and before the working test was completed, was part of the over-all scheme of to prevent an appeal against the supervisors and to foreclose on sanctions against themselves, for the ill-actions against me.

A fundamental requirement of due process in any proceeding which is to be accorded finality is notice, reasonably calculated to apprise parties of the pendency of the action and afford them an opportunity to present their claims. U.S.C.A. Const. Amend. 14, Matter of GAC Corp, 681 F.2d 1295 (11th Cir. 1982)

At no place in the Working Test Rule (encl 2) is it stated that a working test employee can be fired at will.

Conversely, it states that the working test period will be six months...no more and no less.

This Court is requested to note that one of the claims that I was fired for expressing (See Judge Godbold comment) that my working test period should have begun on May 18, when I actually (See Rule 11, encl 2, and page 69, items 8, 9, and 10, Record of Appendices) reported for work, and not June 1.

Civil rights statutes establish that when officers act under color of state law their conduct deprives a claimant of constitutionally protected interest. Howell v. Tanner, 650 F.2d 610 (5th, Ga. 1981).

Regulation F, paragraph F. 104 list those classes of employees not eligible to file a grievance as. A working test employee is not listed:

> "At the discretion of the appointing authority or department head, the following employees may be excluded from eligibility to file a grievance:
>
> "Employees on temporary, intermittent,

student, emergency, or other non-status appointment."

"Part-time employees who work 20 hours or less per week."

"Employees who have been notified of termination."

"Employees who are seeking relief or remedy for the grievance through other administrative or judicial process."

Respondents have retroactively applied in the court system the infamous Involuntary Separation Rule 12.301.1 in an attempt to continue to foreclose on my rights. I was dismissed under Rule 11.202.A (See Ex. "E.5", my Petition for Rehearing, 11th Cir., on file with the Clerk, U. S. Supreme Court.

However, even if the infamous Involuntary Separation Rule 12.301.1 is allowed to stand, the right to appeal is still not at the "discretion" of supervisors, the Merit System, the Governor, or the State Attorney General because the infamous Rule 12.301.1 states:

"...the separation cannot be appealed except as otherwise provided in these rules".

The Merit System Policy statement concerning grievances states:

1. "Access to the Grievance Procedure is a Right of employee, not just a privilege."

2. "Refusal to allow employee a reasonable time to process a grievance is appealable."

3. "Refusal to hear a legitimate grievance is an appealable offense."

4. "Any of the items listed as non-grievable become grievable if discrimination is charged or unjust coercion and reprisal is charged."

5. "Any disciplinary action, even if reasonable and justified, is grievable..."

6. "Don't try to stop grievances...either directly or through others."

And, the rules provide (See Ex. "M" and "P" through "T", Appellant's Reply 11th Cir., dated October 4, 1983, and page 77-84, Record of Appendices).

The action against me is clearly not a suspension and it is only Rule 12.502.1 (Suspensions) that states:

"...[a working test employee] the suspension cannot be appealed."

Facially neutral practice in the use of the rules and regulations and Georgia

law for their treatment of different groups, in fact, fall more harshly on one group than another and cannot be justified. Lincoln v. Board of Regents of Uni Sys of Ga., 697 F.2d 928 (11th, 1983).

If a State law challenged on equal protection grounds threatens fundamental right or impacts upon suspect class, court must strictly scrutinize law and uphold it only if it is precisely tailored to further compelling government interest. U.S.C.A. Const. Amend. 14, Doe v. Plyer, 628 F.2d 448 (5th Cir. 1980).

CONCLUSION

The conclusion in my Reply to Respondents Opposition to my Writ of Certiorari is still valid. My dismissal from my employment and respondents explanations for my dismissal is not grounded in fact or law.

The Georgia Department of Labor has confirmed that the employer has stated:

"Information supplied by the employer

does not specify any particular instances of claimant's failure to follow rules, orders, or instructions, the burden of proof being on the employer, and the presumption with claimant..."

Therefore my dismissal was arbitrary and capricious, and was not based on the purpose of a work test...job performance as the result of training received.

Respondents have implied to this Court that they, under color of Georgia law, have the discretionary power to dismiss minority probationary employees at will and without hearings.

Rule 12.301.1 has no basis in Ga. law. And, Ga. law, governing Merit System employees, does not state that a minority work test employee can be dismissed at any time during the work test period.

Rule 12.301.1 proposed as the authority by respondents and retroactively applied by the District Court, circumvented my Rule 11.202.A dismissal status.

No place in the Constitution of the State of Ga., Ga.law, and the System Act, (Ga

Laws 1975, page 79), in effect at the time of my employment does it state the claim that respondents are implying to this Court that a working test employee has no right to appeal or that a working test employee can be dismissed at anytime prior to completion of a working test.

Conversely, respondents polestar case used to justify my dismissal, in Webster the Court, citing Roth, noted that property interests are not created by the Constitution itself, but their dimensions are defined by existing rules or understandings that stem from an independent source such as State law. Webster v. Redmond, 599 F.2d 793 (5th Cir. 1979). The understanding clearly stems from State law that "working test employees" are, in fact, "covered" by the Merit System Rules and Regulations that permit relief pursuant to Merit System appeals and grievances procedures, and termination at any time, with no appeal rights

is prohibited; therefore, Rule 12.301.1 used by the District Court and affirmed by the Court of Appeals as grounds for dismissal (See page 8, Appen. "B", Record of Appendices), and the DHR Rule A.6.a that forecloses on grievances and appeals once I was notified (less than 24 Hrs) of termination, has no basis in law or fact.

It is reasonable to conclude that when, as is the fact in this case, respondents did not deny IN DISTRICT COURT, APPEALS COURT, AND THIS COURT, the conditions specifically and with particularity, then my allegations are assumed admitted, and respondents cannot later assert that condition precedent has not been met. Fed Civ Proc Rules 9(c), 12(h)(3), 28 USCA; Civil Rights Act 1964, 706, 706(d,e,f) as amended 42 USCA. 2000-e5, 2000e-5(e), (f)(1,3). Jackson v. Seaboard Coast Line R. Co., 678 F.2d 992 (11th 1982 Ga.).

Respectfully submitted,

Roland A. Jones, pro se
Lt. Col. U. S. Army (Retired)

NEW CURRENT DISPOSITIONS OF CONCLUSIONS OF LAW APPLICABLE TO MY CASE

1 A court cannot sustain a federal court's dismissal unless it appears beyond a doubt that Petitioner could prove no set of facts in support of a claim that would entitle his relief. (See Federal Rules Civ. Proc. 12(b) (6), 28 U. S. C. A., Carpenters Local Union No. 1846 of United Broth. of Carpenters and Joiners of America AFL-CIO v. Pratt-Farnsworth, Inc., 690 F. 2d 489 (11th Cir. 1982), and Dumas v. Town of Mt. Vernon, 612 F. 2d 974 (5th Cir. 1980).

1.1. Nontenured [probationary] librarian in a civil rights action showed that her constitutionally protected conduct under the First Amendment was a substantial or motivating factor in decision not to rehire her. The university had to demonstrate by a preponderance of the evidence that it would have reached the same decision as to employee's reemployment in the absence of such conduct. U.S.C.A. Const. Amend. 1, Montgomery v. Boshears, 698 F.2d 739 (11th Cir. 1983 Miss.), United Carolina Bank v. Board of Regents of Stephen F. Austin State University, 665 F.2d 553 (5th Cir. 1982 Tex.), White v. South Park Independent School Dist., 693 F.2d 1163 (11 Cir. 1982 Tex.), Pinkard v. Pullman-Standard, a Div. of Pullman, Inc., 678 F.2d 1211 (11th Cir. 1982 Ala.), and Williams v. City of Valdosta, and 689 F.2d 964 (11th Cir. 1983) 42 U.S.C.A. 1983.

2. The 5th Cir. (11th Cir) Court of Appeals has joined three other circuits in holding that the McDonnell Douglas formulation is applicable to discharge cases. (See Flowers v. Crouch-Walker Corp., 552 F.2d 1277 (7th); Garrett v.

Mobil Oil Corp, 531 F. 2d 892 (8th) and Pitter v. Goodwill Industries, 518 F.2d 864 (6th). Thus, the plaintiffs were required to show that 1) they are members of a protected minority; 2) they were qualified for the jobs from which they were discharged; 3) they were discharged; and 4) when they were discharged, their employer filled the positions with non-minority. Marks v. Prattco, Inc., 607 F.2d 1153 (5th Cir.). (See also Marshall v. Goodyear Tire and Rubber, 544 F. 2d 730, 1977, and Whiting v. Jackson State University, 22 FEP 1296, 1980).

2.2 Word of mouth recruitment, although neutral on its face, operates as a "built-in-headwind" for me, as a black. U.S. v. Georgia Power Co., 474 F2d 906 (5th Cir. 1973).

3. In the 5th and 8th Circuits, it is observed that statistics alone were sufficient to prove a prima facie case of discrimination. Afro American Patrolmen's League v. Duck, 503 F.2d 294 (5th Cir 1974).

4. Under disparate impact theory, petitioner need only show discrete, facially neutral practices which would have a more severe impact on protected group than on unprotected group Civil Rights Act of 1964, 701 et seq., 703(a)(2), 42 U.S.C.A. 2000e et seq., 2000e-2(a)(2) Carpenter v. Stephen F. Austin State University, 706 F.2d 608 (11th Cir 1983).

5. To establish a prima facie case, Petitioner need only show that facially neutral employment standards operated more harshly on one group than another. Civil Rights Act of 1964, 701 et seq., 703(a)(2), 42 U.S.C.A. 2000e et seq., 2000e-2(a)(2) Carpenter v. Stephen F. Austin State University, 706 F.2d 608

(11th Cir. 1983).

5.5 In a prima facie case of disparate treatment, then burden of production, not persuasion, shifts to defendant to articulate some legitimate, nondiscriminatory reason for its actions. Jackson v. Seaboard Coast Line R. Co., 678 F.2d 992 (11th Cir. 1982 Ga.).

6. The four elements of the McDonnell Douglas are not the only way of proving a prima facie case of discrimination in employment. Civil Rights Act of 1964, 701 et seq., 2000e-5. Jones v. Western Geophysical Co. of America, 669 F.2d 280 (5th Cir. 1982 Tex.).

7. Circumstantial or statistical evidence impact may be so strong that the results permit no other inference but that they are the product of discriminatory intent or purpose. Smith v. Balkcom, 671 F.2d 858 (11th Cir. 1982 Ga.).

8. In a Section 1983 prima facie showing, two elements need only be shown: 1. that the act or omission deprived Petitioner of a right, privilege or immunity secured by the Constitution or laws of the United States, and 2. that the act or omission was done by a person acting under color of law. 42 U.S.C.A. 1983. Dollar v. Haralson County, Georgia, 704 F.2d 1540 (11 Cir. 1983).

9. To establish prima facie case of retaliation for participating in process of vindicating civil rights, Petitioner need only show an adverse employment action, and a causal link between protected actions and adverse employment decision; burden then shifts to defendant to articulate some legitimate, nondiscriminatory reason for adverse decision. Hamm v. Members of Board of Regents of

STate of Florida, 708 F.2d 647 (11th Cir. 1983), and only a causal connection between actions and alleged constitutional violation is required. Barksdale v. King, 699 F.2d 744 (11th Cir 1983 La.).

10. The District Court did not apply the proper burden of proof in its dismissal; the District Court failed to follow the proper burden of proof and evidence of pretext for discharge; the District Court did not address the relevant evidence of pretext as an indispensable element of the plaintiff's case. Corley v. Jackson Police Department, 566 F.2d 994 (5th Cir. 1978).

11. Once a prima facie case is made, burden is shifted to defendants to articulate legitimate, nondiscriminatory reason for their actions. Respondents have never articulated such reasons, nor have they been required to articulate such reasons by a court. Civil Rights Act of 1964, 701 et seq., 42 U.S.C.A. 2000e et seq. Smith v. State of Georgia, 684 F.2d 729 (11th Cir. 1982 Ga.).

12. Dismissal of a civil rights suit, alleging discrimination in employment practices, is appropriate when plaintiff has not made a prima facie case. Civil Rights Act of 1964, 701 et seq., 42 U.S.C.A. 2000e et seq.; Federal Rules Civ. Proc. Rule 41(b), 28 U.S.C.A., Junior v. Texaco, Inc., 688 F.2d 377 (11th Cir. 1982 Tex.).

13. Every accused person and every civil litigant is entitled to trial in a system that is fair. U.S.C.A. Const. Amends. 5, 14. Brown v. Vance, 637 F.2d 272 (5th Cir. 1981 Miss.)

14. Even absent the threat of future discriminatory behavior, courts have a

duty to correct and eliminate the present effects of past discrimination NAACP v. City of Evergreen, Alabama, 693 F.2d 1367 (11th Cir. 1982).

15. Under Title VII discharged plaintiffs because of their opposition to defendant's discriminatory practices are illegal. Corley v.Jackson Police Department, 566 F.2d 994 (5th Cir. 1978).

16. Subjectiveness invalidated has these characteristics:

> (1) "[t]he foreman's recommendation is the indispensable single most important factor in the promotion process, [but he is] given no written instructions pertaining to the qualifications necessary for promotion;" (2) "those standards which were determined to be controlling are vague and subjective;" (3) "[h]ourly employees are not notified of promotion opportunities nor are they notified of the qualifications necessary to get jobs;" and, (4) "there are no safeguards in the procedure designed to avert discriminatory practices." Rowe, 457 F.2d 348, 358-59. Rowe v. General Motors Corp., 457 F.2d 348, 359 (5th Cir. 1972).

17. Management performance appraisals, experience forms and interviews provide a "mechanism for subjective actions; systems utilizing subjective evaluations by white supervisors provide a ready mechanism for discrimination. Fisher v. Procter & Gamble Mfg. Co., 613 F.2d 527 (5th Cir. 1980).

18. To be "prevailing party," in civil rights action, it is not necessary to prevail on each and every claim asserted or to receive all relief requested. 42 U.S.C.A. 1988. Civil Rights Act of

1964, 701 et seq., 706(k) as amended 42 U.S.C.A. 2000e et seq., 2000e-5(k); 42 U.S.C.A. 1988. Doe v. Busbee, 684 F.2d 1375 (11th Cir. 1982 Ga.).

19. Reinstatement is basic element of appropriate remedy in wrongful employee discharge cases. 42 U.S.C.A. 1983; U.S.C.A. Const. Amend. 1. Allen v. Autauga County Board of Education, 685 F.2d 1302 (11th Cir. 1982 Ala.)

20. 42 U.S.C. 1981:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

21. 42 U.S.C. 1981:

"all persons...shall have the same right in every State...to the full and equal benefit of all laws...as is enjoyed by white citizens...."

22. 42 U.S.C. 1983:

42 U.S.C. 1983 provides a private, federal remedy for persons deprived of federal rights under color of state law. By its terms alone, 1983 imposes liability upon every person and prohibits a deprivation of "any" rights and privileges, not only secured by the Constitution, but also"laws".

"every person" who, under color of state law or custom "subjects or

causes to be subjected, any citizen of the United States...to deprivation of any rights, privileges, or immunities secured by the Constitution and laws."

23. 42 U.S.C. 1985 (3):

"If two or more persons in any State or Territory conspire or go in disguies on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support of advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy,..."

24. 42 U.S.C. 1988:

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title CIVIL RIGHTS,' and of Title CRIMES,' for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity

with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the Unites States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

25. Title VII, 42 U.S.C. S 2000e-2(a), made applicable to state and local governments on March 24, 1972 provides as follows:

"(a) It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to

deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

26. 42 U.S.C. 2000e:

42 U.S.C. 2000e, subsections (a) and (b), provide as follows:

#For the purposes of this subchapter-

"(a) The term person' includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such terms does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers."

27. THE FOURTEENTH AMENDMENT:

The Fourteenth Amendment, Section 1, to the United States Constitution provides as follows:

> "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws" (emphasis supplied).

28. Ga. Code Ann. 3-704:

"All suits for the enforcement of rights accuring to individuals under statutes, acts of incorporation, or by operation of law, shall be brought within 20 years after the right of action shall have accrued: Provided, however, that all suits for the recovery of wages, overtime or damages and penalties accuring under laws respecting the payment of wages and overtime, prior to March 20, 1943, shall be brought within two years from such data; and that all such suits for the recovery of wages, overtime or damages and penalties accuring under laws respecting the payment of wages and overtime subsequent to March 20, 1943, shall be brought within two years after the right of action shall have accrued."

"Since there is not specifically stated or otherwise relevant federal statute of limitations for a cause of action under S 1981, the controlling period would ordinarily be the appropriate one provided by state law." Johnson v. Railway Express Agency, Inc., 421 U.S. 451, 95 S.Ct. 1716, 44 L.Ed.2d 295 at 302 (1975).

RULE 11. WORKING TEST AND PERMANENT STATUS

SECTION 11.100. WORKING TEST

PAR.11.101. The working test shall be an essential part of the examination process, and shall apply to reappointment, regular appointment, unskilled and custodial appointment and to promotion.

PAR.11.102. The Board may fix the length of the working test period for any class at not less than three nor more than twelve months, exclusive of time spent in non-pay status. THE WORKING TEST PERIOD WILL BE the first SIX MONTHS IN A POSITION unless the Board designates a different length. Any change in the length of the working test period shall apply to all positions in the class affected, but if the period is increased in duration, employees employed under the shorter period will acquire permanent status as if the length had not been increased, unless otherwise specified by the Board.

PAR.11.103. THE WORKING TEST PERIOD SHALL BEGIN with the FIRST DAY on which the employee ACTUALLY reports for work except in instances where the first day of the month is a regularly scheduled non-work day for the position. In such case, the working test period is considered to BEGIN ON THE FIRST DAY of the month, although the employee cannot be placed in pay status until the day he ACTUALLY REPORTS FOR WORK.

ENCL: 2

SECTION 11.200. PERMANENT STATUS

PAR.11.201. It shall be the responsibility of the appointing authority to ascertain whether the services of each employee appointed for a working test period have or have not been satisfactory, and he shall notify the Director that the employee is or is not recommended to be retained in the service.

PAR.11.202. If it is determined that the services of an employee have been unsatisfactory:

A. For an employee serving in working test period as the result of appointment or reappointment as provided under Rule 9, the appointing authority shall notify the employee in writing IN ADVANCE OF THE DATE on which his services are to be terminated. [WRITTEN NOTICE WAS NOT DELIVERED TO ME UNTIL 3 DAYS AFTER THE TERMINATION].

B. For an employee serving a working test period as the result of a promotion under Section 10.100, the appointing authority shall place the employee in an equivalent position in a class to which the employee is eligible for transfer, or in a position in the lower class in which the employee last held permanent status or was eligible for transfer. If such a vacancy is not available, the provision of Section 12.800. Reduction in Force (layoff) shall apply.

PAR.11.203. Permanent status of an employee completing a working test period shall be effective at the beginning of the date following completion of the working test period provided the employee is in work status on that date. Per-

manent status shall not be granted to an employee appointed under the provision of Par.9.209 prior to the acquisition and submission to the appointing authority of the required license or certificate.

PAR.11.204. An employee who is not separated from his position prior to eligibility for permanent status shall acquire permanent status as provided in Par.11.203.

CERTIFICATE OF SERVICE

I, ROLAND A. JONES, do hereby certify that I have, this 22nd day, of October 1984, served the foregoing prior to filing the same, by depositing 3 copies thereof, postage prepaid, in the United States Mail, properly addressed to the following to wit:

Mr. Wayne P. Yancy
Ga. Department of Law
132 State Judicial Building
Atlanta, Ga. 30334

Roland A. Jones, pro se
Lt. Col. U. S. Army (Retired)